

NONRESIDENT PROPERTY OWNERSHIP VOTING

I. Description of a Nonresident Property Ownership Voter

- A person, who due to the ownership of real property within a city or special school district, may register and vote in that city or special school district election, even though the person does not reside in the jurisdiction

II. Authority Under Which Nonresident Property Ownership Voters Vote

A. Municipal Elections

1. T.C.A § 2-2-107 requires that the city charter contain an express provision allowing nonresident real property owners to participate in the municipality's elections.

2. According to T.C.A. § 2-2-107, "If a municipal charter provides for property rights voting, a person must own at least a fifty percent (50%) fee simple interest in real property within the city limits at the time of registration and at the time of election to be eligible as a property rights voter."

B. Special School District Elections - T.C.A. § 49-2-504 provides that "a special school district may, by legislative act, establish eligibility and procedures for nonresident property owners.&

III. Registration Requirements

A. Residency Requirement

1. Generally - Attorney General Opinion No. 95-026 advises that the general law does not impose a residency requirement on nonresident property owners. Consequently, nonresident property owners may register and vote in the city elections regardless of whether the person is a resident of the county, State of Tennessee, or United States.

2. Exceptions

a) Municipal charters may require that the nonresident property owner be a qualified voter for members of the general assembly. If the city charter has such language, then the nonresident property owner must be a resident of the State of Tennessee in order to register and to vote in the city elections.

b) Municipal charters may require that the nonresident property owner be a resident of the county or a qualified voter for members of the county civil district. If the city charter has such language, then the nonresident property owner must be a resident of the county in order to register and to vote in the city elections.

B. Proof of Ownership

1. A person who wants to register as a nonresident property owner must provide the county election commission with information sufficient to demonstrate property ownership within the municipal corporations.

2. Examples - A certified copy of the deed or certified copy of the tax records of the property would be sufficient proof.

3. Caveats

a) If the county allows the applicant to use property tax receipts as proof of ownership, make

sure that the receipt indicates who owns the property and not merely who paid the property taxes. There are instances when people other than the owners of the property pay the property taxes, and these taxpayers would not be eligible to register and vote in the city election.

b) At the end of the voter registration period, the county election commission may want to verify property ownership with the register of deeds to assure that the person seeking to register holds the last recorded deed for the property involved.

C. Registration Deadline - The registration deadline of thirty (30) days before the election applies to a nonresident property owner seeking to register to vote in a municipal election.

D. Separate Registration - To maintain an accurate count of the number of registered voters within a county, the registration records of nonresident property owners must be kept separately. NOTE: If a county election commission commingles the registration records of the registered voters of the county and nonresident property owners of a municipality, then in some instances, county registered voters may be counted twice and individuals who reside outside of the county would be counted as county registered voters. This practice should not be occurring in jurisdictions that have voting by nonresident property owners.

IV. Persons Allowed to Register

A. Those Named on Deed

1. Individuals - A natural person, and not a corporation or other legally created entity, may register and vote as a nonresident property owner.

2. Multiple Persons - Given the required fifty percent (50%) fee simple ownership interest in the municipal real property, there may be no more than two (2) people registered to vote on a single tract of land.

3. Various Types of Entities Sometimes Owning Property

a) Partnership - A named partner of the partnership whose name appears on the deed may register and vote.

b) Limited Partnership - The General Partner of the Limited Partnership may register and vote on property owned by the Limited Partnership.

c) Corporation - Because a corporation is not a natural person, but a legally created entity, the corporation does not have a right to register and vote. By the same token, representatives of the corporation may not register and vote in place of the corporation. However, any natural person named on the deed as co-owner of the tract of land may be allowed to register and vote.

d) Limited Liability Company (LLC) - Same as Corporation

B. Tract of Land must be of a Sufficient Enough Size for Owners to Have a Substantial Interest.

1. To register and vote as a nonresidential property owner, the administrator of elections must find that the property in question is of a sufficient size to give the persons named on the deed a substantial enough interest in the property to constitute more than just a voting lot.

2. Guidance from Attorney General Opinions

a) Attorney General Opinion No. U88-96 (August 30, 1988) advises that ownership in tracts of land of only a few square feet does not render the person a bona fide owner of real property and does not entitle the person to register to vote in municipal elections.

b) Attorney General Opinion No. 82-134 (March 16, 1982) advises that "a fairly strong argument can be made for the restriction of the right to vote to those property owners who own a lot large enough to erect thereupon a dwelling or commercial building."

V. Charter Requirements -

Other than those charter requirements that may violate the constitution, such as owning the property for a specified period of time before the election, the administrator of elections must impose the specified charter requirements.

A. Various Types of Enforceable Requirements Placed in Municipal Charters

1. Number Limitation - Some municipal charters limit the number of persons who may register and vote on a single tract of land, such as no more than two (2) persons per tract of land.
2. Ownership Percentage - If the municipal charter requires that nonresident owners possess a certain interest in the land greater than the required fifty percent (50%) interest.
3. Minimum Assessed Value - Some municipal charters provide that nonresident property owners must own property that has been assessed at a certain minimum value, such as one thousand dollars (\$1,000.00).

B. Unenforceable Requirements Placed in Municipal Charters

1. Duration Requirement - The city charter requirement that the nonresident own the property for a specified period of time violates the constitution and therefore may not be enforced. (See Attorney General Opinion No. 95-026)
2. Types of Election - Any city charter that attempts to restrict a nonresident to voting only for municipal officers, but not being able to vote on municipal questions may not be enforceable.

C. Sample Language - Many city charters that provide for nonresident property ownership voting rights contain language that is unconstitutional and fails to provide any meaningful criteria for the administrator of elections to use in determining who may register as a nonresident property owner. For any municipality that desires to amend its charter relative to nonresident property owners, the language provided below indicates an example of language that would, in all likelihood, withstand a constitutional challenge and provide the administrator of elections with useful guidelines.

1. Persons who reside outside of the city limits and who are otherwise eligible to vote for members of the Tennessee general assembly and who own at least fifty percent (50%) fee simple interest in real property within the city limits at the time of registration and at the time of the election may register and vote in city elections.
2. For the determination of fifty percent (50%) ownership, a qualified voter must be a registered owner holding at least fifty percent (50%) ownership to be entitled to vote. No more than two (2) voters are allowed per tract or parcel of land. If husband and wife are each owners of a fifty-percent (50%) interest in a tract or parcel of land, only one (1) shall be allowed to vote (husband or wife).
3. The qualified voter shall vote in the precinct assigned by the election commission and the voter shall, within the time required for registration of voters in such election, obtain a certificate from the city stating that the voter is a qualified voter in the upcoming election.
4. A qualified voter residing outside of the city limits shall not be entitled to run for or hold office as to any elective position.